

# Court of Appeals, State of Michigan

## ORDER

Larry Hodges v Renaissance Center

Docket No. 272157

LC No. 04-423193-AV

Kurtis T. Wilder  
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray  
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

The motion to dismiss is DENIED.

The Court further orders, pursuant to MCR 7.205(D)(2), that the July 14, 2006, order of the Wayne Circuit Court affirming the district court's denial of summary disposition to defendant hereby is VACATED. Considering the facts in a light most favorable to plaintiff, see *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999), the record before this Court is insufficient as a matter of law to support the claims against defendant. Even assuming arguendo that defendant had possession and control over Renaissance Drive, our Supreme Court has ruled that "potholes in pavement are an 'everyday occurrence' that ordinarily should be observed by a reasonably prudent person." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523; 629 NW2d 384 (2001). The fact that a newspaper covered the pothole does not amount to a "special aspect" sufficient to impose liability here. Debris collecting in a pothole on a city street does not comprise a unique situation leading to an unreasonably high likelihood of harm. Plaintiff could have stepped around the newspaper and thereby could have avoided the pothole. Further, the newspaper-covered pothole did not pose the type of severe threat of injury that our Supreme Court envisioned in *Lugo's* illustration of the deep, open, and unguarded pit. *Id.* at 518. Finally, the record reflects no evidence to show that the blowing newspaper was anything but a transient condition such that defendant was, or should have been, on notice of the condition. As a result, the Court directs that the February 15, 2005, order of the Wayne Circuit Court reversing the grant of partial summary disposition to plaintiff and granting defendant's motion for summary disposition is REINSTATED. This cause is REMANDED to the district court for entry of an order of dismissal consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).<sup>A</sup> The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 01 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk